

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Case No. 8:03-CR-77-T-30TBM

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

_____ /

**MOTION OF SAMI AMIN AL-ARIAN FOR LEAVE
TO RESPOND TO GOVERNMENT’S RESPONSE TO
DEFENDANT’S MOTION TO DISMISS THE INDICTMENT
FOR UTILIZATION OF INFORMATION DERIVED
FROM A FOREIGN WIRETAP**

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by and through undersigned counsel, pursuant to Local Rule 3.01 (b), and hereby moves this Honorable Court for the entry of an Order permitting the Accused to file a short responsive pleading to the Government’s response to the Motion to Dismiss the Indictment for Utilization of Foreign Wiretap Information. The grounds for this motion necessarily reference the Accused’s previous Motion on this issue and further states:

1. After corresponding with the United States Attorney for over a year inquiring into whether Dr. Al-Arian had been overheard on other wire taps, and whether the United States relied upon evidence derived from an Israeli wiretap to use in some manner against Dr. Al-Arian, and after repeating they had complied with their discovery obligations the government finally answered that they were “under no legal obligation to disclose the information sought”.

2. Yet, in their Summary on the last page of their Response, in a laborious hypothetical, they claim the following:

If a foreign government conducted a search on foreign soil in connection with a foreign investigation, and disclosed information obtained from that search to the United States and such information (or other evidence derived from such information) were offered into evidence against a defendant in a federal court in the United States, then such evidence would be admissible regardless of the lawfulness of the search as measured by United States or foreign law, unless the defendant could show that the search in the foreign country was conducted in such a way so as to “shock the judicial conscience” or United States officials were engaged in a “joint venture” with the foreign officials. If the defendant *could show* either of these theories were applicable to the facts, then the search would be governed by the constraints of the Fourth Amendment. The Defendant would have to show that his Fourth Amendment rights were violated in order to suppress the evidence. Even then, if the United States could show it had an independent source for the evidence or that the causal link between the unlawfully obtained evidence and the evidence offered at trial had become sufficiently attenuated, then the evidence would still be admissible.

3. A fair reading of the government’s previous hypothetical is instructive in that it agrees that at the very least an evidentiary hearing is required . How else could it be *shown* “that the search in the foreign country was conducted in

such a way as to shock the judicial conscience”; or, United States Officials *were engaged* in a joint venture

4. The Government concedes that if the defendant *could show* either of these theories were applicable to the facts, then the search would be governed by the constraints of the Fourth Amendment. The Defendant would have to show that his Fourth Amendment rights were violated in order to suppress the evidence.
5. On page 10 of their Response, the government claims “even if the Israeli government supplied the FBI delegation with intercepted communications in 2002, it did not do so until long after the FBI had gathered its own wiretap evidence in the United States against the defendants.
6. The defense appreciates their “candor” but we are required to test not just the evidence, but also the manner in which it was derived and utilized. Therefore, we would like an opportunity to brief their cases and conduct an evidentiary hearing around the issue of the Israeli wire taps, when were they instigated, and by whose direction, were the American s involved in any type of partnership or joint venture, who were the targets and how was this information shared with the FBI and the federal government?

WHEREFORE, comes now the Accused and respectfully requests this Court enter an Order allowing the Accused to file a response to the Government’s Response to our Motion on the Utilization for Foreign Wiretap.

Dated: 21 February 2005

Respectfully Submitted,

/s/ William B. Moffitt
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd February, 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
Attorney for Sami Al-Arian